

Frontier of Connecticut, Inc. d/b/a Center for Optimum Care and New England Health Care Employees Union, District 1199, AFL-CIO. Case 34-CA-8281

August 12, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN
AND BRAME

Pursuant to a charge filed on March 17, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on April 27, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 34-RC-1520. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 29, 1998, the Acting General Counsel filed a Motion for Summary Judgment. On June 2, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contention, rejected in the representation proceeding, that the certified unit is inappropriate because the registered nurses and the licensed practical nurses who constitute the unit are supervisors within the meaning of the Act.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation, with an office and place of business in West Hartford, Connecticut (facility), has been engaged in the

operation of a skilled and semiskilled nursing facility providing health care services to the general public. During the 12-month period ending March 31, 1998, the Respondent in conducting its business operations described above, derived gross revenues in excess of \$100,000 and purchased and received at its West Hartford facility goods valued at more than \$50,000 directly from points outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held January 8, 1998, the Union was certified on February 3, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its West Hartford, Connecticut facility; but excluding all other employees, RN shift supervisors, per diem RN shift supervisors, the executive director, director of nursing services, assistant director of nursing services, inservice/staff development coordinator, and guards, other professional employees and other supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since February 5, 1998, the Union has requested the Respondent to bargain, and, since February 5, 1998, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 5, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins

to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Frontier of Connecticut, Inc. d/b/a Center for Optimum Care, West Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with New England Health Care Employees Union, District 1199, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its West Hartford, Connecticut facility; but excluding all other employees, RN shift supervisors, per diem RN shift supervisors, the executive director, director of nursing services, assistant director of nursing services, inservice/staff development coordinator, and guards, other professional employees and other supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in West Hartford, Connecticut, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 34 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facil-

ity involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 5, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER BRAME, dissenting.

In the underlying representation proceeding, I dissented from my colleagues' denial of the Employer's request for review of the Acting Regional Director's Decision and Direction of Election, in which he found that the Employer's RN and LPN charge nurses were not supervisors within the meaning of the Act. Review of the record was initially denied and here, effectively, my colleagues continue to deny review. In light of the close scrutiny of the Board's decisions in the charge nurse area by the courts, I believe it both appropriate and essential that where, as here, significant factual issues have been raised, the Board give each record a full and careful review. See, e.g., *Altercare of Hartville v. NLRB*, 129 F.3d 365 (6th Cir. 1997), denying enforcement to 321 NLRB 847 (1996), and *Cedar Ridge Nursing & Rehabilitation Center v. NLRB*, 147 F.3d 333 (4th Cir. 1998), denying enforcement to 322 NLRB No. 29 (1996) (not reported in Board volumes).

Accordingly, I dissent from my colleagues' granting the Acting General Counsel's Motion for Summary Judgment and their finding that the Employer violated Section 8(a)(5) and (1) in this certification-testing proceeding.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with New England Health Care Employees Union, District 1199, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time and regular part-time registered nurses and licensed practical nurses employed by us at our West Hartford, Connecticut facility; but excluding all other employees, RN shift supervisors, per diem RN shift supervisors, the executive director, director of nursing services, assistant director of nursing services,

in-service/staff development coordinator, and guards, other professional employees and other supervisors as defined in the Act.

FRONTIER OF CONNECTICUT, INC. d/b/a CENTER
FOR OPTIMUM CARE